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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 MASS, 3/F

425 I Street, N.W.

Washington, D.C. 20536

File: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: SEP 30 2003

IN RE: Petitioner:  
Beneficiary:

[REDACTED]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

**PUBLIC COPY**

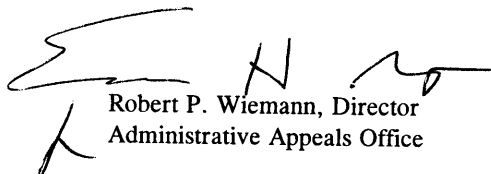
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church incorporated in California in 1989. The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as a "full-time church music director and conductor."

The director denied the petition, finding that the petitioner failed to establish that the offered position qualifies as a religious occupation for the purpose of special immigrant classification.

On appeal, counsel for the petitioner submits a brief.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary is a 44-year old native and citizen of Korea.

According to the evidence on the record, the beneficiary is currently working at the Bongsin Church in Seoul, Korea, as a music director and conductor.

The sole issue raised by the director is whether the petitioner established that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

*Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in the regulations. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function.

The petitioner described the proffered position as follows:

Plans, organize, and directs church choir and designs to promote religious music education among choir and church members. Analyzes member participation and changes church religious program according to needs for musical problem and difficulties. Plans church musical activities and projects and encourage active participation on programs. Visit homes of choir members and confers with clergy members, church official. Provide new music and arrangement for youth and adult choir and instruments. Gives special vocal lessons to soloist and all choir members. Directs group and individual practice. Leads Hymns at worship congregation.

Also, [the beneficiary] is coming solely for carrying our vocation of a Church Music Director/Conductor of that religious worker, and in order to work for the organization is a professional capacity in an organization religious occupation.

[Sic.]

The director determined that there was no evidence in the record nor was there any assertion that the beneficiary was required to complete formal religious training or theological education in order to perform the duties of the proffered position; therefore, the petitioner failed to establish that the proffered position constitutes a qualifying religious occupation. While the AAO concurs with the director's conclusion, it does so for a different reason.

In a request for additional evidence, the director asked the petitioner to explain how the duties of the position relate to a traditional religious function. In response, the petitioner resubmitted a copy of his initial letter with the job description quoted above. The petitioner failed to address the director's request in its reply to the request for additional evidence.

On appeal, counsel for the petitioner cites *Perez v. Ashcroft*, 2002 WL 1821744 (N.D. Ill) for the proposition that a music director may qualify as a religious occupation. The decision in *Perez v. Ashcroft* is not binding on the AAO in the adjudication of this appeal. *Perez* was decided by a United States district court in the northern district of Illinois. The instant case arose in California. More significantly, the petitioner failed to explain how the facts in *Perez* are analogous to those in the instant case.

In review, the petitioner failed to establish that the duties of the proffered position relate to a traditional religious function in the petitioning church; therefore, failed to establish that the proffered position is a qualifying religious occupation.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary had been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States for at least two years immediately preceding the filing of the petition. Since the appeal will be dismissed for the reason stated above, this issue need not be examined further.

Further, while the determination of an individual's status or duties within a religious organization is not under CIS' purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.